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RECEIVED
2005 JAN 14 AM 9:00
T.R.A. DOCKET ROOM

January 14, 2005

VIA HAND DELIVERY

Chairman Pat Miller
c/o Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 04-00288.

Dear Chairman Miller:

Enclosed for filing in the above-referenced docket please find the original and thirteen (13) copies of the following documents:

1. Tennessee American Water Company's Response in Opposition to the Consumer Advocate and Protection Division's Motion to Compel;
2. Affidavit of Michael A. Miller filed in support of the above-mentioned document; and
3. Affidavit of Paul T. Diskin filed in support of the above-mentioned document referenced in numbered paragraph 1, above.

Should you have any questions with respect to these filings, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,



R. Dale Grimes

RDG/tn
Enclosures

Chairman Pat Miller

January 14, 2005

Page 2

cc: Henry Walker, Esq.
Michael A. McMahan, Esq.
Timothy C. Phillips, Esq.
Mr. Paul Diskin
T.G. Pappas, Esq.

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IN RE:

T.R.A. DOCKET ROOM

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

Docket No. 04-00288

Petitioner Tennessee American Water Company respectfully submits that the Consumer Advocate's Motion to Compel is not well taken and should be denied. At issue is the Consumer Advocate's discovery request 43:

Provide copies of any correspondence, notes, e-mails, reports or other documents from RWE or RWE Thames Water to American Water or Tennessee American where RWE or RWE Thames informs American Water or Tennessee American that RWE Thames must achieve an overall return on capital of 8 percent annually.

Tennessee American Water responded as follows:

Petitioner objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Petitioner states that the return on capital employed target set for the RWE Thames Water division of the company is 8%. Capital employed includes equity capital as well as external capital. For the RWE Thames Water division, of which American Water is a part, this would include capital employed in both regulated and unregulated enterprises.

Thus, Tennessee American duly asserted proper objections to this extremely broad and burdensome request, *and* also provided a substantive answer to the question. According to the

Consumer Advocate, this response was filed on December 2, 2004; it was certainly filed and received by the Consumer Advocate no later than December 3, 2004. This was pursuant to an agreement between the parties and their counsel that the Consumer Advocate would have no objection to this schedule so long as the response was received by December 3, 2004. A letter memorializing this agreement was faxed to the Hearing Officer and all counsel on December 1, 2004.

After receiving the response to request 43, Tennessee American and the Consumer Advocate discussed the sufficiency of the response. Ultimately, after Tennessee American reiterated its objections and answer, the Consumer Advocate advised on December 16, 2004, that he would not file a motion to compel regarding request 43, but would object if Tennessee American were to file any of the requested documents later in the case. So the matter rested for nearly four weeks until Tennessee American received the present Motion to Compel late on Wednesday, January 12, 2005.

The Motion to Compel should be denied for the following reasons:

1. The discovery request is clearly over broad and unduly burdensome. A simple review of the language of the request itself makes this obvious. Not that there is a huge number of requested documents, but rather the scope of the search that would be required to determine whether any such documents even exist would itself be extremely burdensome. To comply with the request, Tennessee American would have to locate and review thousands of documents many of which are neither in its possession or control nor relevant to any issue in this matter. In addition, the request would seem to require Tennessee American to search for documents in the files and computers of several entities, including RWE, RWE/Thames, and American Water, in addition to Tennessee American's own files. See Affidavit of Michael A. Miller ¶ 3 (January 13,

2005)("Miller Affidavit"); Affidavit of Paul T. Diskin ¶ 3 (January 13, 2005)("Diskin Affidavit"). In effect, the Consumer Advocate's request identified several haystacks, and sought to require Tennessee American to endeavor to find out if there were a needle in one of them. This is a misuse of the discovery process.

2. Tennessee American provided an answer to the question despite having legitimate objections. Not only did Tennessee American assert objections to this onerous discovery request, it also answered that "the return on capital employed target set for the RWE Thames Water division of the company is 8%." The answer went on to explain what was meant by the term "capital employed" in this context. Since Tennessee American has answered the question, the Consumer Advocate's insistence on a search of emails, correspondence, notes, reports, or other documents is wasteful, duplicative, and unreasonable.

3. There are no documents as described in the request that are relevant either to this matter in general or to any planned contradiction of the testimony of Dr. Brown. The Consumer Advocate argues that information might possibly be obtained from such a massive document search that would be pertinent to the extent "TAWC intends to contradict Dr. Brown's observation that the 8% return sought in this matter by TAWC is the result of an arbitrary directive from the parent company of TAWC." Such a search would be futile. Tennessee American's witnesses Paul T. Diskin and Michael A. Miller have filed affidavits stating that they are the ones responsible for preparing and presenting Tennessee American's petition in this docket. Mr. Diskin is "responsible for the revenue, operating expenses, depreciation, taxes and rate base portions of this proceeding" and is "the Company witness supporting the majority of those adjustments." Diskin Affidavit at ¶ 2. Mr. Miller is "responsible for the overall Petition" and is the "witness presenting the Company's overall cost of capital and capital structure

included in the filing." Miller Affidavit at ¶ 2. Certainly if the 8% return sought in this matter were the result of the "arbitrary directive from the parent companies of TAWC," then these witnesses would have knowledge of it. To the contrary, both witnesses deny receiving or being aware of any document containing such arbitrary directive. Diskin Affidavit at ¶ 6; Miller Affidavit at ¶ 6. Further they deny receiving any such instruction, directive, or mandate, in verbal or written form. Diskin Affidavit at ¶ 7; Miller Affidavit at ¶ 7. Tennessee American does intend to contradict Dr. Brown's incorrect assumption about the 8% return, but the sworn testimony of Mr. Diskin and Mr. Miller establish that no parent company "directive" drove the analysis that resulted in the return on capital being sought in this case.

4. Tennessee American's response to discovery request 43 was filed no later than December 3, 2004, in accordance with the parties' agreement. It is surprising that the Consumer Advocate would mention, albeit only in a footnote, that Tennessee American's response was filed outside the time period prescribed in the Hearing Officer's Order. The parties had agreed that filing by December 3, 2004, would be acceptable to the Consumer Advocate. See Letter to Hearing Officer Stone (December 1, 2004) (attached as Exhibit 1). Tennessee American honored that agreement.

5. Not only did the parties attempt to resolve any dispute concerning Tennessee American's response to discovery request 43, they reached a resolution. The Consumer Advocate's motion asserts that the "Consumer Advocate has previously sought to work through these discovery disputes informally, but was unable to do so." This is another surprising claim. The parties had several communications concerning Tennessee American's response, resulting in the Consumer Advocate's statement on December 16, 2004, that he would not file a motion to compel but would object if Tennessee American filed any of the requested documents later in the

case. See Timothy Phillips to Dale Grimes Email (December 16, 2004) (attached as Exhibit 2). Since that time, there has been no change in circumstances that would justify the precipitous filing of this motion. Tennessee American has stood by the parties' understanding. The Consumer Advocate should do likewise

For all the foregoing reasons, the Consumer Advocate's Motion to Compel should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", is written over a horizontal line.

R. Dale Grimes (#6223)
J. Davidson French (#15442)
T. G. Pappas (#2703)
BASS, BERRY & SIMS PLC
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001
(615) 742-6200

*Counsel for Petitioner
Tennessee American Water Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response in Opposition to Consumer Advocate's Motion to Compel has been served via the method(s) indicated, on this the 13th day of January, 2005, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan, Esq.
<input type="checkbox"/> Mail	Phillip A. Noblett, Esq.
<input checked="" type="checkbox"/> Facsimile	Lawrence W. Kelly, Esq.
<input type="checkbox"/> Overnight	Nelson, McMahan & Noblett
	801 Broad Street, Suite 400
	Chattanooga, TN 37402
<input type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input checked="" type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
	P.O. Box 20207
	Nashville, TN 37202
<input type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input checked="" type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
	P.O. Box 340025
	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input checked="" type="checkbox"/> Facsimile	633 Chestnut Street, 9 th Floor
<input type="checkbox"/> Overnight	Chattanooga, TN 37450



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BASS, BERRY & SIMS PLC
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www.bassberry.com
December 1, 2004

OTHER OFFICES

NASHVILLE MUSIC ROW
KNOXVILLE
MEMPHIS

VIA FACSIMILE

Jean A. Stone
Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 04-00288.

Dear Hearing Officer Stone:

We wanted to let you know about a delay in a few of our discovery responses. Paul Diskin of Tennessee American Water Company filed the responses to the Consumer Advocate's second set of interrogatories today with the exception of responses to interrogatories 41, 43, and 50. We understand that Mr. Diskin advised Mike Chrysler that he hoped to respond to those three interrogatories very soon and that Mr. Chrysler had no objection. Davidson French, a lawyer in our office, informed Joe Shirley of this situation today, and Mr. Shirley indicated that there should not be any problem if the remaining responses were filed by Friday, December 3, 2004.

Should you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,

R. Dale Grimes / by Davidson French
R. Dale Grimes

RDG:tn

cc: Henry Walker, Esq.
Michael A. McMahan, Esq.
Timothy C. Phillips, Esq.
Paul Diskin
T.G. Pappas, Esq.

EXHIBIT 1

Grimes, Dale

From: Timothy Phillips [Timothy.Phillips@state.tn.us]
Sent: Thursday, December 16, 2004 11:57 AM
To: Grimes, Dale
Cc: Joe Shirley; Timothy Phillips
Subject: tawc

I will not be filing a motion to compel regarding # 43, based on your assertion that there is nothing in these documents that would lead to discovery information. If TAWC files any of these documents later in this case, I will object to TAWC's conduct.

Thanks.

Timothy C. Phillips
Senior Counsel
Office of the Tennessee Attorney General
(425 Fifth Avenue North)
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-3533 PHO
(615) 532-2910 FAX
Timothy.Phillips@state.tn.us

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EXHIBIT

2

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TRA DOCKET ROOM

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS

Docket No. 04-00288

AFFIDAVIT OF MICHAEL A. MILLER

I, Michael Miller, after being duly sworn, state:

1. I am the Treasurer/Comptroller for five Southeast Region regulated subsidiaries of American Water Works Service Company. The Southeast Region companies are located in West Virginia, Kentucky, Tennessee (Tennessee-American Water Company), Virginia, and Maryland. I am responsible for overseeing the rates and revenue, accounting, finance, budgets, and cash management functions for each of the operating companies in the Southeast Region, including Tennessee-American Water Company ("TAWC"). I am over twenty-one (21) years of age, and am otherwise competent to testify. The following statement is a true and accurate account of my own personal knowledge and information.

2. Paul Diskin and I have been responsible for preparing and presenting to the Tennessee Regulatory Authority the Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so as to Permit It to Earn a Fair and Adequate Rate of Return on its Property Used and Useful in Furnishing Water Service to Its Customers (TRA Docket No. 04-00288). I am responsible for the overall Petition and I am the Company witness

presenting and supporting the Company's overall cost of capital and capital structure included in the filing

3. During discovery in this proceeding, in its Discovery Request No. 43, the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD"), asked TAWC to "provide copies of any correspondence, notes, e-mails, reports or other documents from RWE or RWE Thames Water to American Water or Tennessee American where RWE or RWE Thames informs American Water or Tennessee American that RWE/Thames must achieve an overall return on capital of 8 percent annually " In order to comply with this request, TAWC would have had to locate and review thousands of documents, many of which are neither in its possession or control nor relevant to any issue in this matter In addition, the request would seem to require TAWC to search for documents in the files and computers of several entities, including RWE, RWE/Thames, and American Water, in addition to its own files.

4. In an effort to provide information to the CAPD that would be responsive to the request, TAWC acknowledged in its response to Discovery Request No. 43 that "the return on capital employed target set for the RWE/Thames Water division of the company is 8%. Capital employed includes equity capital as well as external capital. For the RWE Thames Water division, of which American Water is a part, this would include capital employed in both regulated and unregulated enterprises."

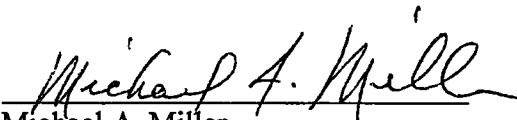
5. I understand that the CAPD now has filed a Motion to Compel TAWC to provide a supplemental response to Discovery Request No. 43.

6. I never received any correspondence, note, e-mail, report or other document from RWE or RWE/Thames Water to American Water or Tennessee American where RWE or RWE/Thames informs American Water or Tennessee American that RWE/Thames must achieve

an overall return on capital of 8 percent annually I am not aware of any correspondence, note, e-mail, report or other document from RWE or RWE/Thames Water to American Water or Tennessee American where RWE or RWE/Thames informs American Water or Tennessee American that RWE/Thames must achieve an overall return on capital of 8 percent annually.

7. As previously stated, there is no dispute that the return on capital employed target or goal set for the RWE/Thames Water Division of the company was 8%. However, I never received any instruction, directive, or mandate, in verbal or written form, from anyone that RWE RWE/Thames, American Water, or TAWC must achieve an overall return on capital of 8 percent annually or that I should calculate a Weighted Cost of Capital for filing in this rate proceeding for TAWC to meet a pre-determined target.

FURTHER AFFIANT SAITH NOT.


Michael A. Miller

STATE OF WEST VIRGINIA)

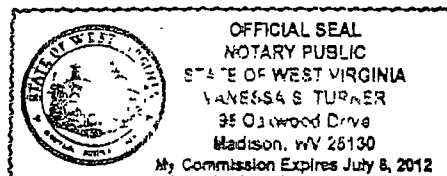
COUNTY OF Kanawha)

Personally appeared before me, a Notary Public in and for said County and State, the within named Michael Miller, who, after having been duly sworn, executed the foregoing Affidavit for the purposes therein contained.

WITNESS my hand and official seal this 13th day of January, 2005


NOTARY PUBLIC

My Commission Expires: July 6, 2012



Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

J Davidson French (#15442)

R. Dale Grimes (#6223)

T. G. Pappas (#2703)

BASS, BERRY & SIMS PLC

AmSouth Center

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Michael A. Miller has been served via the method(s) indicated, on this the 13th day of January, 2005, upon the following:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Michael A. McMahan, Esq.
Phillip A. Noblett, Esq.
Lawrence W. Kelly, Esq.
Nelson, McMahan & Noblett
801 Broad Street, Suite 400
Chattanooga, TN 37402

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Timothy C. Phillips, Esq.
Vance L. Broemel, Esq.
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Henry M. Walker, Esq.
Boult, Cummings, Conners & Berry, PLC
Suite 700
1600 Division Street
P.O. Box 340025
Nashville, TN 37203

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

David C. Higney, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, 9th Floor
Chattanooga, TN 37450



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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

2005 JAN 14 AM 9:02

T.R.A. DOCKET ROOM

IN RE:

PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS

Docket No. 04-00288

AFFIDAVIT OF PAUL T. DISKIN

I, Paul Diskin, after being duly sworn, state:

1. I am the Manager of Rates and Regulations for the Southeast Region of American Water Works Service Company located at 800 W. Hershey Park Drive, Hershey, Pennsylvania. I supervise and coordinate the preparation of data and various exhibits in rate matters as well as maintaining and administering the Company's tariffs. I also present testimony in formal rate cases and other regulatory proceedings.

2. Michael Miller and I have been responsible for preparing and presenting to the Tennessee Regulatory Authority the Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so as to Permit It to Earn a Fair and Adequate Rate of Return on its Property Used and Useful in Furnishing Water Service to Its Customers (TRA Docket No. 04-00288). I am responsible for the revenue, operating expenses, depreciation, taxes and rate base portions of this proceeding and I am the Company witness supporting the majority of those adjustments.

3. During discovery in this proceeding, in its Discovery Request No. 43, the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD"),

asked TAWC to “provide copies of any correspondence, notes, e-mails, reports or other documents from RWE or RWE/Thames Water to American Water or Tennessee American where RWE or RWE/Thames informs American Water or Tennessee American that RWE/Thames must achieve an overall return on capital of 8 percent annually.” In order to comply with this request, TAWC would have had to locate and review thousands of documents, many of which are neither in its possession or control nor relevant to any issue in this matter. In addition, the request would seem to require TAWC to search for documents in the files and computers of several other entities, including RWE, RWE/Thames, and American Water, in addition to its own files.

4. In an effort to provide information to the CAPD that would be responsive to the request, TAWC acknowledged in its response to Discovery Request No. 43 that “the return on capital employed target set for the RWE/Thames Water division of the company is 8%. Capital employed includes equity capital as well as external capital. For the RWE/Thames Water division, of which American Water is a part, this would include capital employed in both regulated and unregulated enterprises.”

5. I understand that the CAPD now has filed a Motion to Compel TAWC to provide a supplemental response to Discovery Request No. 43.

6. I never received any correspondence, note, e-mail, report or other document from RWE or RWE/Thames Water to American Water or Tennessee American where RWE or RWE/Thames informs American Water or Tennessee American that RWE/Thames must achieve an overall return on capital of 8 percent annually. I am not aware of any correspondence, note, e-mail, report or other document from RWE or RWE/Thames Water to American Water or

Tennessee American where RWE or RWE/Thames informs American Water or Tennessee American that RWE/Thames must achieve an overall return on capital of 8 percent annually.

7. As previously stated, there is no dispute that the return on capital employed target or goal set for the RWE/Thames Water division of the company was 8%. However, I never received any instruction, directive, or mandate, in verbal or written form, from anyone that RWE RWE/Thames, American Water, or TAWC must achieve an overall return on capital of 8 percent annually or that I should utilize a Weighted Cost of Capital for filing in this rate proceeding for TAWC to meet a pre-determined target.

FURTHER AFFIANT SAITH NOT.

Paul T. Diskin
Paul T. Diskin

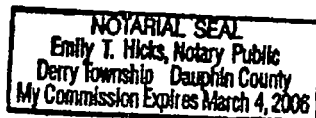
STATE OF PENNSYLVANIA)
COUNTY OF Dauphin)

Personally appeared before me, a Notary Public in and for said County and State, the within named Paul T. Diskin, who, after having been duly sworn, executed the foregoing Affidavit for the purposes therein contained.

WITNESS my hand and official seal this 13th day of January, 2005.

ET Hicks
NOTARY PUBLIC

My Commission Expires:



Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Davidson French", written over a horizontal line.

J. Davidson French (#15442)

R. Dale Grimes (#6223)

T. G. Pappas (#2703)

BASS, BERRY & SIMS PLC

AmSouth Center

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Paul T. Diskin has been served via the method(s) indicated, on this the 13th day of January, 2005, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan, Esq.
<input type="checkbox"/> Mail	Phillip A. Noblett, Esq.
<input checked="" type="checkbox"/> Facsimile	Lawrence W. Kelly, Esq.
<input type="checkbox"/> Overnight	Nelson, McMahan & Noblett
	801 Broad Street, Suite 400
	Chattanooga, TN 37402
<input type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input checked="" type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
	P.O. Box 20207
	Nashville, TN 37202
<input type="checkbox"/> Hand	Henry M. Walker, Esq.
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<input checked="" type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
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<input type="checkbox"/> Overnight	Chattanooga, TN 37450

